

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

JULIA PRESLEY

PLAINTIFF

v.

NO. 1:14cv158-SA-DAS

CARLOCK NISSAN OF TUPELO, INC.

DEFENDANT

NOTICE OF REMOVAL

Without waiving any rights to deny that any cause of action exists against it and without waiving any other defense, exception or obligation that may exist in favor of it, including, without limitation, the defenses of lack of personal jurisdiction, *forum non conveniens*, lack of service of process, improper process, compulsory arbitration and improper venue, both in state and federal court, Defendant Carlock Nissan of Tupelo, Inc., files this Notice of Removal with the Clerk of the United States District Court for the Northern District of Mississippi, Eastern Division, under 28 U.S.C. Section 1441 and, in support thereof, presents the following:

FACTS

1. Plaintiff Julia Presley ("Plaintiff") filed a Complaint against Defendant Carlock Nissan of Tupelo, Inc., on August 5, 2014, in the County Court of Lee County, Mississippi. The Complaint, which bears cause no. CV2014-000857, alleges that Carlock Nissan of Tupelo, Inc., is liable as a result of the sale of a pre-owned 2012 Nissan Versa to the Plaintiff for use by Plaintiff's daughter. The Complaint alleges that

the vehicle experienced mechanical and the daughter discovered that the vehicle had previously been damaged in an accident and stolen. The Complaint seeks recovery for breach of contract, fraud, failure to disclose pursuant to the Uniform Commercial Code, negligence and for violation of the Magnuson-Moss Federal Warranty Act, 15 U.S.C. Section 2301, et seq. The Complaint seeks rescission of the contract, unspecified compensatory damages, punitive damages, interest and attorney's fees. The Complaint names as Defendant "Carlock Nissan of Tupelo, Inc.," although the vehicle was actually sold to the Plaintiff by Carlock Toyota of Tupelo, Inc., d/b/a Carlock Toyota.

2. Attached collectively as Exhibit "A" are true and correct copies of the pleadings and process purportedly served on Carlock Nissan of Tupelo, Inc.

REMOVAL IS TIMELY

3. This Notice of Removal is filed within the explicit deadline of 28 U.S.C. Section 1446 as removal has occurred within 30 days following the purported receipt by Defendant Carlock Nissan of Tupelo, Inc., of the Summons and Complaint through service of process on "Sales Manager, David Tate" on or about August 11, 2014.

THE DISTRICT COURT HAS ORIGINAL JURISDICTION

4. This suit is a civil action over which this Court has original "federal question" jurisdiction under 28 USC Section 1331 and 15 USC 2310, Magnuson-Moss Federal Warranty Act, as a result of the Plaintiff's claim for an alleged violation of the Magnuson-Moss Federal Warranty Act. The Complaint seeks less than \$200,000 in damages.

5. Upon removal, the United States District Court will have original jurisdiction in this case and Defendant Carlock Nissan of Tupelo, Inc., consents to final orders or judgments by the United States District Court.

WHEREFORE, PREMISES CONSIDERED, Carlock Nissan of Tupelo, Inc., prays that this Notice of Removal and attached exhibits be filed and received by the United States District Court for the Northern District of Mississippi, Eastern Division.

RESPECTFULLY SUBMITTED, this the 4th day of September, 2014.

/s/ Michael D. Tapscott
Michael D. Tapscott, MSB No. 8776

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Attorneys for Defendant

CERTIFICATE OF SERVICE

The undersigned does hereby certify that he has this day served by United States mail, proper postage prepaid, a true and correct copy of the above and foregoing to the following:

Edwin H. Priest, Esq.
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Ms. Joyce Roberts Loftin
Lee County County Clerk
P. O. Box 762
Tupelo, Mississippi 38802
Telephone: 662-841-9022
Facsimile: 662-680-6079

Dated this the 4th day of September, 2014.

/s/ Michael D. Tapscott
Michael D. Tapscott